

## **REMARKS/ARGUMENTS**

### **Claim Rejections – 35 USC § 112**

The Examining Attorney has rejected claims 9 and 11 as being indefinite for failing to particularly point out and distinctly claim the subject matter upon which Applicant regards as the invention. First of all Applicant disagrees that there is no support under 112 as page 13 lines 14-18 provides support to modify the behavior of a person to change to use an electronic payment system. However, Applicant has amended claims 9 and 11 and submits that the rejection has therefore been removed.

### **Obviousness - Section 103(a) Rejection**

The Examining Attorney has rejected claims 1-6 and 8 as being obvious, referring to a three (3) reference combination including Early Payment, Lawlor (5,870,724), and further in view of Storey (6,578,012). The Applicant respectfully requests that the Examiner reconsider and remove the obviousness rejection based on the arguments, points and authorities set forth below. The Applicant further submits that for four of the claims presented, the Examiner is now up to combining four separate references, which should be indicative that the invention of those claims is non-obvious and that the patents must teach away from the invention.

The Applicant again submits that the references do not include all the elements in the claims as amended, and there is therefore no prima facie case for obviousness.

The Examiner rejects all claims based on the assertion that Early Payment teaches: *identifying a member behavior of members making installment payments which is desired for modification, and identifying a desired behavior goal for said members making installment payments; and the at least one selected member having the behavior pattern identified for modification the desired behavior.* However a closer reading indicates that Early Payment at best only identifies a member and does NOT identify a behavior pattern for modification. In the example given in Early Payment by the Examiner, Chavez already "always pays his bill on time" – so there was no behavior pattern identified for modification. Therefore this element of the claims is not present and the combined references do not therefore contain all the elements to support an obviousness rejection.

The Applicant further submits that the new claims submitted above are in a position for allowance.

With respect to claims 9, 10, 11 and 12, the Examiner is now up to combining four (4) separate references in order to piece together an obviousness rejection, which in and of itself is indicative that the invention claimed is NOT obvious and that the references instead teach away from the invention.

As the PTO recognizes in MPEP 2142:

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process.... The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of non-obviousness.... The initial evaluation of *prima facie* obviousness thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention.


The Applicant submits that a *prima facie* case requires that all elements be contained in the references, which in this rejection is not the case.

## Conclusion

Applicant therefore submits Claims 1-6 and 8 – 12 are now in a position to proceed to allowance.

Respectfully submitted,

Dated: 10-5-07

By:   
Mark W. Hendricksen  
Reg. No. 32,356